



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SMK Precision Machine Tools Corp.

File: B-239041.2

Date: August 6, 1990

Sam Z. Gdanski, Esq., for the protester.
Vera Meza, Esq., Department of the Army, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where a small business concern protests a contracting officer's nonresponsibility determination, and the Small Business Administration (SBA) has declined to issue a certificate of competency to the firm, the General Accounting Office will not review the protest because the firm did not make a showing of either possible fraud or bad faith on the part of the SBA or that the SBA failed to consider vital information bearing on the firm's responsibility.

DECISION

SMK Precision Machine Tools Corp. protests the rejection of its apparent low bid under invitation for bids (IFB) No. DAAE07-90-B-A009, issued by the Department of the Army for combustor domes, on the basis that SMK is a nonresponsible bidder. SMK challenges the contracting officer's determination of nonresponsibility.

We dismiss the protest.

SMK, a small business concern, was the apparent low bidder under the solicitation. Following a preaward survey, the contracting officer determined that SMK was a nonresponsible bidder due to its unsatisfactory production capability and unsatisfactory performance record. The preaward survey revealed that during the previous year, SMK had been delinquent in performing two contracts. The contracting officer referred the question of SMK's responsibility to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). The SBA declined to reverse the contracting officer's nonresponsibility

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determination. In its letter to SMK, the SBA stated that SMK's performance record, production planning, and financial capability were inadequate and unsatisfactory, and reflected a lack of assurance that the contract, if awarded to SMK, would be completed as required by the solicitation. The SBA stated it had no sufficient reason for disagreeing with the contracting officer's nonresponsibility determination and therefore did not issue a COC to SMK. This protest followed.

SMK argues that the contracting officer acted in bad faith by accepting inaccurate information as revealed by the preaward survey concerning its alleged delinquent performance of two contracts.

Our Office will generally not review a contracting officer's nonresponsibility determination where a small business is concerned since by law the SBA has conclusive authority to determine the responsibility of a small business by issuing or failing to issue a COC. 15 U.S.C. § 637(b)(7)(A) (1988); Custom Research, Inc.--Request for Recon., B-238976.2, June 14, 1990, 90-1 CPD ¶ _____. Our Office limits its review of the denial of a COC to instances in which the protester's submission indicates that SBA action on a referral may have been taken fraudulently or in bad faith or that the SBA failed to consider vital information bearing on the firm's responsibility. Durodyne, Inc., B-235437, June 5, 1989, 89-1 CPD ¶ 527.

Here, SMK challenges the contracting officer's nonresponsibility determination. Since this determination is subject to a conclusive determination by SBA, we will not consider SMK's allegation of bad faith against the contracting officer.

SMK did not allege, and there is no evidence in the record to suggest, that the SBA acted fraudulently or in bad faith or that the SBA failed to consider vital information bearing on SMK's responsibility in connection with its denial of a COC to SMK. Therefore, we have no basis to review SBA's denial of a COC to SMK.

SMK appears to argue that at a debriefing following the SBA's denial of the COC that the SBA agreed there was additional information available bearing on SMK's ability to perform and that the SBA should re-evaluate its denial of a COC in light of this information. However, where a bidder has been found nonresponsible and the SBA has denied the bidder a COC, there generally is no legal requirement that the agency reopen the case and request the SBA's

reconsideration of the matter. Noe & Luebbert Constr. Co.,
Inc.--Request for Recon., B-236662.2, Sept. 28, 1989, 89-2
CPD ¶ 285.

Accordingly, the protest is dismissed.

Michael R. Golden

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